

Ruppert PL



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Fedserv Industries, Inc.

File: B-222631

Date: August 19, 1986

DIGEST

Where contract for mechanical operation and maintenance services in a federally-owned building is for a 3-year term, a requirement for a bid guarantee and a performance bond, each equal to 20 percent of the contract price for the entire period, does not unduly restrict competition. The government reasonably may seek to protect its interest for the effective period of the contract.

DECISION

Fedserv Industries, Inc. protests the allegedly restrictive provisions of invitation for bids (IFB) GS-07-P-86-HT-C-0094/7SB, issued May 9, 1986 by the General Services Administration (GSA), Fort Worth, Texas. The IFB called for mechanical operation, maintenance, and related services for the A.J. Elender Federal Building and U.S. Post Office in Houma, Louisiana for 3 years.

The protester contends that the IFB requirement for a bid guarantee and a performance bond, each totaling 20 percent of the contract price for the 3-year term, as opposed to 20 percent of annual increments, effectively excludes small businesses; it argues that the IFB should be revised.

We deny the protest.

GSA is authorized by statute to enter into contracts for periods not exceeding 3 years for the inspection, maintenance, and repair of fixed equipment in federally-owned buildings such as the one at issue here. See 40 U.S.C. § 490(a)(14) (1982). In this case, the solicitation clearly indicated that the term of the contract would be 36 months (or 3 years), subject to the availability of appropriations, and that it was a multiyear contract, rather than a single year contract with option years.

In addition, it clearly indicated that the bid guarantee and performance bond must each equal 20 percent of the contract price for the entire 3-year term. The protester did not submit a bid. Of the three that GSA received, that of Johnson Controls, Inc., a large business, appears to be low. One of the other bids is from a self-certified small business concern.

Since the protester does not allege that no bonds should be required, the sole issue for our determination is whether the requirement for bonds based on the 3-year contract price unduly restricts competition.

Under GSA's regulations, the penal amount of a performance bond for a service contract of more than \$25,000 generally should be from 10 to 50 percent of the contract price for the term of the contract at the time of award. 48 C.F.R. § 528.103-3(b) (1985). The contracting officer must "consider the circumstances and determine the amount of the performance bond on a case-by-case basis." Id. Bid guarantees are required for building service contracts when a performance bond requirement is imposed. 48 C.F.R. § 528.101-1(b). The agency states that GSA Region 7 routinely uses 20 percent as the bond amount in all service contracts.

We conclude that the effective term of a contract--here 3 years--is the proper period on which to base a bond. See Building Maintenance Corp., B-187843, Jan. 25, 1977, 77-1 CPD ¶ 55, aff'd on reconsideration, Feb. 23, 1977, 77-1 CPD ¶ 131. The contractor will operate and maintain government-owned equipment in a government facility. If the contractor fails to perform, the government will need to reprocure for the entire 3 years. In other words, this is not an option contract where the option may not be exercised after the first year. Compare Consolidated Technologies, Inc., B-215723, Dec. 7, 1984, 84-2 CPD ¶ 639; Pacific Coast Utilities Service, Inc., B-209003.2, Jan. 20, 1983, 83-1 CPD ¶ 73 (even when options are evaluated, the government should not pay more, in the form of a price that includes bonds covering options, to protect a contingent interest). Finally, the protester has not presented any evidence to show that the bonding requirements are unreasonable or were invoked in bad faith.

We therefore do not find the requirement that the bonds be equal to 20 percent of the contract price for the entire 3 years unreasonable. Nor do we find, in view of the number of bids received, that the requirement unduly restricted competition.

The protest is denied.

for Seymour E. Fros
Harry R. Van Cleve
General Counsel